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**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*

03/18/2024
Clerk of the Court
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ATTORNEYS FOR PLAINTIFFS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

CGC-24-613190

JOHN G. GUMAS, individually, and as
Trustee of The John G. and Janice H.
Gumas Living Trust, dated March 26,
2002; JANICE H. GUMAS, individually,
and as Trustee of The John G and
Janice H Gumas Living Trust, dated
March 26, 2002; ANGELA SINICROPI,
individually, and as Trustee of The
SINTAK Living Trust, U/A dated
February 7, 2005; MARTIN
TAKIGAWA, individually, and as
Trustee of The SINTAK Living Trust,
U/A dated February 7, 2005; FRANCES
J. OSORIO, individually, and as Trustee
of The Julio E. Osorio and Frances J.
Osorio Revocable Living Trust, Dated
June 28, 2001; and JULIO E. OSORIO,
individually, and as Trustee of The Julio
E. Osorio and Frances J. Osorio
Revocable Living Trust, Dated June 28,
2001,

Plaintiffs,

v.

THE CITY AND COUNTY OF SAN
FRANCISCO, by and through the SAN
FRANCISCO PUBLIC UTILITIES
COMMISSION and the DEPARTMENT
OF PUBLIC WORKS. and Does 1

Case No.

COMPLAINT FOR DAMAGES

1. Inverse condemnation

DEMAND FOR JURY TRIAL

1 through 50, inclusive,
2 Defendants.

3 **GENERAL BACKGROUND**

4 **I. THE PLAINTIFFS**

5 1. Plaintiffs are all individual residents of the State of California, LLCs or
6 legal entities of California, and owners, tenants, or occupants of real property
7 situated in the City and County of San Francisco in the neighborhood commonly
8 known as South of Market (“SoMa”). San Francisco is unusual among major cities in
9 the Western United States, in that its sewage and storm water system is combined.
10 The part of this system that runs through SoMa is antiquated and has been
11 neglected and inadequately maintained by the City and County of San Francisco. As
12 a result, the system routinely gets overwhelmed, overflows, and inundates Plaintiffs’
13 properties and neighborhood with untreated sewage and contaminated water. Thus,
14 Plaintiffs are the owners, tenants, or occupants of the real property that was taken
15 and damaged by the Defendants, and each of them, as described in more detail below.

16 **II. THE DEFENDANTS**

17 2. Defendant City and County of San Francisco (the “City”) is a public
18 entity organized and existing pursuant to a duly adopted Charter, as authorized by
19 the Constitution of the State of California.

20 3. Plaintiffs are unaware of the true names and capacities of those
21 defendants sued herein as Does 1 through 50, inclusive, and, therefore, sue such
22 defendants by fictitious names. Plaintiffs are informed and believe and, based upon
23 such information and belief, allege that each of the defendants designated as Does 1
24 through 25, inclusive, is contractually, intentionally, negligently, legally, or in some
25 manner responsible for the events and occurrences more fully described below and
26 which proximately caused injuries and/or damages to Plaintiffs as alleged herein.
27 Plaintiffs will seek leave to amend this complaint to set forth the true names and
28 capacities of those defendants if and when they have been ascertained.

1 4. Plaintiffs are informed and believe and, based upon such information
2 and belief, allege that at all times mentioned each of the defendants was the agent
3 and/or employee of the remaining defendants, and was at all times acting within the
4 scope and purpose of this agency and/or employment and with the consent and
5 permission of the remaining defendants.

6 5. Does 1 through 20 are contractors who were hired by the City and/or the
7 San Francisco Public Utilities Commission to perform various work on the storm
8 drainage and sewer system, including the paving of roadways and the alteration of
9 the drainage slope for the diversion of water into catch basins. In performing work
10 for the City and/or the San Francisco Public Utilities Commission, Does 1 through 20
11 were engaged in the nondelegable duty of the City as the owner of the
12 aforementioned works of improvement to maintain the improvements in a reasonably
13 safe condition. In addition, the work for which said contractors were hired, involved a
14 particular risk of harm that arises out of the nature of the work on said storm
15 drainage system and sewer system and against which a reasonable person or entity
16 would recognize the necessity of taking special precaution. As such, the City is jointly
17 and severally liable for the acts and omissions of Does 1 through 20.

18 **III. VENUE ALLEGATIONS**

19 6. Venue is proper in San Francisco County because the Defendants, or
20 some of them, reside in San Francisco County, and because the harms and losses
21 described occurred in San Francisco County and a defendant is the City and County
22 of San Francisco.

23 **IV. FACTUAL BACKGROUND**

24 7. At all times mentioned herein, by and through the San Francisco Public
25 Utilities Commission, the City has owned a system of public improvements to collect
26 and divert the accumulation of both storm water and sewage, consisting primarily of
27 paved streets sloping to catch basins, drains and underground culverts to divert
28 rainfall and other water into San Francisco Bay, and combined therewith a system of

1 plumbing lines, pipes and culverts to transfer sanitary sewage into one of three
2 wastewater facilities for treatment. At all times mentioned herein, by and through
3 the Department of Public Works, the City has operated and maintained (or failed to
4 maintain) the storm water and sewage system as a public work of improvement. In
5 the area at issue in this Complaint, the storm and sanitary sewer systems collect
6 both sewage and storm water runoff in a single set of culverts, for transport to the
7 three wastewater treatment facilities.

8 8. A significant number of the components of the storm drainage and
9 sewer system were constructed over 100 years ago, and have, over time, deteriorated
10 because of age, lack of reinforcement, lack of improvement, and lack of maintenance.

11 9. The storm drainage and sewer system that was built and owned by the
12 City was constructed and is operated for the benefit of all citizens of the City. The
13 City has not, however, either equitably or adequately fulfilled its obligation to
14 maintain the system in a reasonably safe condition, and has devoted substantially
15 greater money and time for the maintenance of those portions of the system located
16 “upstream” rather than in the area that is the subject of this Complaint. In fact, over
17 the past decade, the City has continued to repair and improve its system “upstream”
18 of the Plaintiffs’ properties having the direct effect of channeling even greater and
19 greater amounts of water and sewage into the areas surrounding Plaintiffs’
20 properties at a time when no significant “downstream” improvements have been
21 performed. The net effect of the City’s actions has been to create more extensive
22 damage to Plaintiffs’ properties, even at times when there is less water and sewage
23 moving through the system.

24 10. For a significant period of time, the City has had actual and constructive
25 knowledge that in the neighborhoods where Plaintiffs live and work, the storm
26 drainage and sewer system cannot handle the storm water and sewage created by
27 even modest winter storms. Defendants have also had actual and constructive
28 knowledge, by virtue of their expertise and familiarity with the “dual design” of the

1 storm drainage and sewer system, that the inadequate capacity of the system would
2 not only cause the overflow of rainwater during various storms but would
3 additionally cause the release of raw and untreated sewage into Plaintiffs' homes,
4 businesses and onto their land.

5 11. This dangerous lack of drainage and processing capacity was further
6 exacerbated by: the City's failure to adequately maintain the storm drainage and
7 sewer system, both due to deterioration of the physical components of the system and
8 additionally due to the City's failure to clear the system's culverts of accumulated
9 silt, sediment and debris; the City's failure to clear obstructions to the catch basins;
10 and the City's actions in changing the configuration of surface streets and sidewalks
11 without making corresponding changes needed to facilitate the collection and
12 diversion of storm water and sewage.

13 12. Over time, this dangerous lack of drainage and processing capacity was
14 further exacerbated by the City's issuance of occupancy permits for new businesses
15 and residences, which increased the runoff of water flowing to the system from, over,
16 and through driveways, other impervious surfaces, building gutters, and collection
17 pipes, all of which increased discharge of sewage into the system. During that time
18 and since, the City failed to take steps to update the storm drainage and sewer
19 system or to replace its components, and the City failed to increase or even maintain
20 the system's drainage capacity to keep abreast of population growth.

21 13. In addition, the dual design of the storm drainage and sewer system
22 routinely overwhelmed the capacity of the wastewater treatment facilities during
23 heavy storms, causing untreated sewage to be dumped into San Francisco Bay. To
24 meet various clean water regulations, the City ultimately constructed new treatment
25 facilities at a cost of more than \$1.5 billion, and it maintains detailed monitoring of
26 sewage discharge into the San Francisco Bay, which can result in sizeable fines to
27 the City. During significant rainstorms, the system cannot handle the combined
28 volume of storm water and untreated sewage flowing into the treatment facilities,

1 and the discharge gates at the wastewater treatment facilities must occasionally be
2 opened during significant rains and allow raw sewage to be discharged into San
3 Francisco Bay.

4 14. City officials knew, or should have known, especially in light of past
5 litigation, that the City's failure to maintain and improve the storm drainage and
6 sewer system in Plaintiffs' neighborhoods would reduce the volume of storm water
7 that would flow to the wastewater treatment facilities during significant rains and
8 the system would continue to fail. Accordingly, the City's failure to maintain the
9 system actually provided a benefit to the City as a whole, by minimizing the risk of
10 raw sewage being discharged into San Francisco Bay. However, this benefit to the
11 citizens of the City as a whole comes at a direct cost to Plaintiffs, who are left with
12 inadequate storm drainage and sewer system service and are stuck carrying the
13 burden for the rest of the City. In essence, Plaintiffs, through the inundation of the
14 storm water and sewage into their homes, properties and streets, are acting as a
15 catch basin so that the contaminants do not flow onto other San Francisco properties
16 and so that less of the contaminants pollute the ocean and San Francisco Bay and
17 fines are avoided. It is precisely this type of unequal burden on Plaintiffs as
18 compared with the rest of the citizenry that the laws of inverse condemnation were
19 enshrined in our Constitution, and further developed through case law. Moreover,
20 these are precisely the circumstances under which fair compensation *must* be
21 provided.

22 15. In addition, Plaintiffs are informed and believe, and thereupon allege,
23 that the City operates the discharge gates at its wastewater treatment facilities in
24 such a way that during significant rains, the volume of water that collects at the
25 treatment facilities before the discharge gates are opened creates an obstruction that
26 prevents the storm drainage and sewer culverts from operating even at the reduced
27 level of capacity caused by their current dilapidated condition. Plaintiffs are further
28 informed and believe that the volume of water that collects at the treatment facilities

1 before the discharge gates are opened causes further diversion of water from the
2 storm drainage and sewer system onto the properties adjacent to the system
3 particularly at its lower elevations – including the properties owned and occupied by
4 Plaintiffs in this lawsuit.

5 16. The inadequacy of San Francisco’s combined sewage and storm water
6 system (in its current condition) to handle the storm water and sewage created by
7 even modest winter storms is well known to the City. Defendants observed the
8 system failures and significant damages incurred by many of the Plaintiffs in this
9 case as well as many other San Francisco residents related to storm events for
10 decades. Large historical storm surge events commonly occur in the Bay Area, and
11 impact cities all across the Bay, including San Francisco. Such events occurred
12 including, but not limited, on the following dates: December 1955; January 1963;
13 January 1973; January 1982; January 1983; December 1983; February 1986,
14 November 1994; February 1998; December 2003; January 2004, February 2004;
15 December 2005-January 2006; December 2014; March 2016; and October 2021.

16 17. Litigation followed as a result of failures of the City’s combined sewage
17 and storm water system during December of 2003, February of 2004, and December
18 of 2014. In the course of this litigation, the issue of whether the City’s combined
19 sewer and storm drain system is a “flood control project” subject to the *Belair v.*
20 *Riverside County Flood Control Dist.* (1988) 47 Cal.3d 550 reasonableness standard
21 was briefed, argued, and ruled upon. The Superior Court of San Francisco County
22 found in the negative, holding that the City’s combined sewer and sanitary system is
23 not a flood control project within the meaning of *Belair*. Accordingly, the liability of
24 the City was premised and found upon strict liability, and not a reasonableness
25 standard. Because this issue was actually litigated in this former proceeding, the
26 City was a party to the former proceeding, the City had a full and fair opportunity to
27 litigate the issue in the former proceeding, the Court’s decision was final and on the
28 merits, and in order to promote judicial economy, Plaintiffs allege that the City

1 should be collaterally estopped from relitigating this issue in the instant matter and
2 that issue preclusion applies to plaintiffs' inverse condemnation cause of action here.

3 18. Further, because the decision in the prior proceeding was final and on
4 the merits, and because the inverse condemnation claim in the present action
5 presents the same cause of action, involves the same or closely related parties to the
6 claim brought as a result of the December 2003, February 2004, and December 2014
7 storms, Plaintiffs allege that the doctrine of res judicata applies as to Plaintiffs'
8 inverse condemnation cause of action.

9 19. Following each litigation and thereafter, the City has represented that it
10 was taking the necessary steps to upgrade or fix the system to avoid future failures.
11 The systems' continued failures demonstrate that these known hazards were not
12 fixed, despite the fact that it is reasonably expected that heavy rainfall events will
13 continue to become heavier and more frequent in the future, and at a minimum
14 remain as described above.

15 20. In 2011, the City began a Sewer System Improvement Program as a
16 twenty-year, city-wide investment to purportedly enhance the reliability and
17 performance of its wastewater system. In 2014, the U.S. Environmental Protection
18 Agency's ("EPA") Region 9 ("Region") shared an early draft National Pollutant
19 Discharge Elimination System ("NPDES") permit with San Francisco. The permit
20 reissuance process was put on hold when the Region and the California State
21 Regional Water Quality Control Board sought additional information. In 2016, the
22 Region sent an information request after receiving reports of "raw sewage mixed with
23 stormwater...overflowing from the City and County of San Francisco' [CSS] into
24 streets, sidewalks, residences and businesses." In 2017, the Regional Water Quality
25 Control Board sent San Francisco a request for additional monitoring data to better
26 understand the quality of the wet weather discharges.

27 21. In March 2018, the City submitted a Long Term Control Plan Synthesis
28 ("LTCP") to the Regional Water Quality Control Board in the context of its Bayside

1 permit requirements. In response to that submission, the Regional Water Quality
2 Control Board informed San Francisco that the Synthesis did not adequately address
3 the minimum required elements of the Bayside Permit requirement to update its
4 LTCP, in part because the document did not reflect “current circumstances.” San
5 Francisco gave a written response to the Regional Water Quality Control Board’s
6 comments, but it did not submit a revised Synthesis. Then, in April 2019, the Region
7 and the Regional Water Quality Control Board issued another public notice and
8 opportunity to comment on the City’s draft NPDES permit and received additional
9 comments from numerous members of the public asking the permitting authorities to
10 stop allowing San Francisco to discharge sewage into people’s homes and businesses.

11 22. Instead of acting with reasonable care for its citizens, San Francisco
12 continued to resist required updates, and, in January 2020, the City petitioned the
13 Environmental Appeals Board to review the Region’s permit decision to discharge
14 from its existing combined sewer system into the Pacific Ocean, contesting *inter alia*
15 the requirement to report on sewer overflows from the combined sewer system and
16 the requirement to update its LTCP. The City argued that the Region had neither
17 the authority nor the requisite jurisdiction to regulate the subject decisions and
18 conduct. The Environmental Appeals Board denied the City’s petition, concluding
19 that the requirement to report on isolated sewer overflows is not to “regulate” the
20 City, but rather that the frequency, cause, and location of isolated sewer overflows
21 can be indicative of whether the permitted combined sewer system is operating
22 appropriately; including in compliance with the permit’s requirement to maximize
23 storage without increasing upstream flooding into basements and streets, which can
24 “negatively impact human health and the environment.”

25 23. The City chose not to update the storm drainage and sewer system,
26 knew or should have known that by failing to do so, more sewage would discharge
27 into the bay subjecting it to fines and adverse consequences, violate permitting, and
28 instead of facing those consequences the City chose to operate and maintain the

1 system such that it would cause discharge onto Plaintiffs' property.

2 24. The City knew, or should have known, that SoMa was a specifically
3 vulnerable neighborhood with respect to the incapability of the City's combined storm
4 drainage and sewer system to handle precipitation events, and the consequent
5 untreated sewage and stormwater overflow issue. In just the last few years, SoMa
6 residents suffered from inundations in at least December 2014, October 2021 and
7 December 2022.

8 25. As a direct result of the October 2021 events, the California Regional
9 Water Quality Control Board issued a Cleanup and Abatement Order requiring the
10 City to take immediate remedial action to abate potential threats posed by sewer
11 overflows from the combined sewer systems in certain low-lying areas of the City and
12 County of San Francisco, including SoMa.

13 26. Starting on or around December 31, 2022 and lasting into January
14 2023, a rainstorm passed through San Francisco. Due to the acts, events, and
15 conditions recited above, the City's failed yet again, backing up and overflowing
16 during the storm, and causing torrents of water and untreated sewage to inundate
17 Plaintiffs' properties.

18 27. As a direct result of the December 2022/January 2023 failures of the
19 combined storm drainage and sewer system, a mix of raw sewage and storm water
20 flowed in and around Plaintiffs' properties, permeating the soils, walls, and floors,
21 and depositing highly contaminated and toxic fecal and other raw sewage matter in
22 and around Plaintiffs' homes. The City has failed to take any remedial steps to
23 properly remove the contaminants from Plaintiffs' properties and surrounding soils
24 despite knowing that Plaintiffs, their families, their children and other citizens are
25 being exposed to these contaminants on a continuing basis.

26 28. As a direct, proximate and legal result of the City's acts and omissions,
27 the failure of its public work of improvement, including its failure to maintain the
28 storm water and sewage system, the damage to Plaintiffs would not have occurred.

1 That damage includes but is not limited to:

- 2 a. Damage to personal property;
- 3 b. Damage to real property;
- 4 c. Costs of cleanup and repair;
- 5 d. Costs of replacement;
- 6 e. Dangerous exposure to raw sewage;
- 7 f. Dangerous exposure to mold, which still plagues many of
- 8 Plaintiffs' properties;
- 9 g. Loss of business and business inventory;
- 10 h. Loss of occupancy;
- 11 i. Loss of enjoyment and use of property; and
- 12 j. Reduction in the value of Plaintiffs' properties.

13 29. By virtue of the failure of the City's storm and sewer system, its acts
14 and omissions as set forth above, each Plaintiff has suffered general damages in a
15 sum exceeding the jurisdictional minimum of this Court.

16 **FIRST CAUSE OF ACTION**

17 **(Inverse Condemnation)**

18 30. Plaintiffs incorporate by reference herein, as though set forth in full, the
19 allegations of paragraphs 1 through 30, above.

20 31. The City and Does 11 through 20 (hereafter jointly referred to as "the
21 City"), through a public project, have caused Plaintiffs to suffer a taking or damaging
22 of private property for public use without just compensation, in violation of article 1,
23 section 19 of the California Constitution, and have caused Plaintiffs to suffer an
24 invasion of their property rights which resulted from a deliberate act, carrying with
25 it the purpose of fulfilling a public work of improvement for the general population of
26 San Francisco.

27 32. As a proximate result of the failure of the combined storm drainage and
28 sewer system (hereafter sometimes referred to as "the public improvement")

1 Plaintiffs have suffered significant damage to private property as herein described.

2 33. In addition, Plaintiffs have incurred costs, disbursements, and expenses,
3 including attorney's fees, interest, appraisal and engineering fees because of this
4 proceeding in amounts that cannot yet be ascertained, but which are recoverable in
5 this action pursuant to, among other provisions, Code of Civil Procedure section
6 1036.

7 **PRAYER FOR RELIEF**

8 34. WHEREFORE, Plaintiffs pray judgment, damages and relief from
9 defendants and each of them as follows:

- 10 a. For general (non-economic) and economic damages according to
11 proof at trial;
- 12 b. For attorneys' fees, expert fees, appraisal fees, engineering fees,
13 interest and other expenses allowable under Code of Civil
14 Procedure sections 1036 and 1268.311;
- 15 c. For costs of suit herein incurred;
- 16 d. For prejudgment interest as allowed by law; and
- 17 e. For such other and further relief as the Court may deem just and
18 proper.

19 Dated: March 18, 2024

WALKUP, MELODIA, KELLY & SCHOENBERGER

20
21 By: 

22 DOUGLAS S. SAELTZER
23 KHALDOUN A. BAGHDADI
24 MAX SCHUVER
25 MARTIN P. NEIRA
26 Attorneys for Plaintiffs
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: March 18, 2024

WALKUP, MELODIA, KELLY & SCHOENBERGER

By:



DOUGLAS S. SAELTZER
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